

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1897
OFFERED BY MR. WESTERMAN OF ARKANSAS**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “ESA Amendments Act of 2025”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Endangered Species Act of 1973 definitions.
Sec. 3. Authorization of appropriations.
Sec. 4. Rule of construction.

**TITLE I—OPTIMIZING CONSERVATION THROUGH RESOURCE
PRIORITIZATION**

Sec. 101. Prioritization of listing petitions, reviews, and determinations.

**TITLE II—INCENTIVIZING WILDLIFE CONSERVATION ON PRIVATE
LANDS**

Sec. 201. Conservation Benefit Agreements.
Sec. 202. Conservation plans.
Sec. 203. NEPA exemption for incidental take permits.

**TITLE III—PROVIDING FOR GREATER INCENTIVES TO RECOVER
LISTED SPECIES**

Sec. 301. Protective regulations under Endangered Species Act of 1973.
Sec. 302. 5-year review determinations.
Sec. 303. Judicial review during monitoring period.
Sec. 304. Designation of critical habitat.
Sec. 305. Treatment of State, Tribal, and local government data.
Sec. 306. Clarifying significant portion of range of species.
Sec. 307. Delisting criteria.

TITLE IV—CREATING GREATER TRANSPARENCY AND
ACCOUNTABILITY IN RECOVERING LISTED SPECIES

- Sec. 401. Requirement to publish basis for listings and critical habitat designations online.
- Sec. 402. Decisional transparency and use of State, Tribal, and local information.
- Sec. 403. Disclosure of expenditures under Endangered Species Act of 1973.
- Sec. 404. Award of litigation costs to prevailing parties in accordance with existing law.
- Sec. 405. Analysis of impacts and benefits of determination of endangered or threatened status.

TITLE V—STREAMLINING PERMITTING PROCESS

- Sec. 501. Limitation on reasonable and prudent measures.
- Sec. 502. Successive consultations.
- Sec. 503. Clarifying jeopardy.
- Sec. 504. Clarifying action area.
- Sec. 505. Judicial review.

TITLE VI— ELIMINATING BARRIERS TO CONSERVATION

- Sec. 601. Permits for CITES-listed species.
- Sec. 602. Utilize Convention standard for permits applicable to non-native species.

TITLE VII—RESTORING CONGRESSIONAL INTENT

- Sec. 701. Limiting agency regulations.

1 SEC. 2. ENDANGERED SPECIES ACT OF 1973 DEFINITIONS.

2 (a) FORESEEABLE FUTURE.—Section 3(20) Endan-
3 gered Species Act of 1973 (16 U.S.C. 1532(20)) is amend-
4 ed by—

5 (1) striking “The term” and inserting “(A) The
6 term”; and

7 (2) by adding at the end the following:

8 “(B) For the purposes of applying sub-
9 paragraph (A), the term ‘foreseeable future’
10 means the period of time extending into the fu-
11 ture within which the Secretary, based on the
12 best scientific and commercial data available, is

1 able to determine that a factor described in
2 subparagraphs (A) through (E) of section
3 4(a)(1) is likely to occur with respect to the
4 species.”.

5 (b) COMMERCIAL ACTIVITY.—Section 3(2) Endan-
6 gered Species Act of 1973 (16 U.S.C. 1532(2)) is amend-
7 ed by inserting “or public display or education aimed at
8 the preservation or conservation of a species” after “orga-
9 nizations”.

10 (c) CONSERVE; CONSERVING; CONSERVATION.—Sec-
11 tion 3(3) of the Endangered Species Act of 1973 (16
12 U.S.C. 1532(3)) is amended by striking “and transplan-
13 tation, and, in the extraordinary case where population
14 pressures within a given ecosystem cannot be otherwise
15 relieved, may include” and inserting “transplantation,
16 and, at the discretion of the Secretary,”.

17 (d) HABITAT.—Section 3(5) of the Endangered Spe-
18 cies Act of 1973 (16 U.S.C. 1532(5)) is amended by add-
19 ing at the end the following:

20 “(D)(i) For the purpose of designating critical
21 habitat for a threatened species or an endangered
22 species under this Act, the term ‘habitat’—

23 “(I) means the abiotic and biotic setting
24 that currently or periodically contains the re-
25 sources and conditions necessary to support 1

1 or more life processes of the threatened species
2 or endangered species; and

3 “(II) does not include an area—

4 “(aa) outside the current or historic
5 range of the threatened species or endan-
6 gered species; or

7 “(bb) visited by only vagrant indi-
8 vidual members of the threatened species
9 or endangered species.

10 “(ii) If the setting described in clause (i)(I)
11 does not support all of the life processes of the rel-
12 evant threatened species or endangered species, the
13 threatened species or endangered species must be
14 able to access, from the setting, other areas nec-
15 essary to support its remaining life processes.”.

16 (e) BEST SCIENTIFIC AND COMMERCIAL DATA
17 AVAILABLE.—Section 3 of the Endangered Species Act of
18 1973 (16 U.S.C. 1532) is amended—

19 (1) by redesignating paragraphs (2) through
20 (10) as paragraphs (3) through (11), respectively;
21 and

22 (2) by inserting after paragraph (1) the fol-
23 lowing:

24 “(2) The terms ‘best scientific and commercial
25 data available’ and ‘best scientific data available’—

1 “(A) mean all relevant and objective sci-
2 entific and commercial information available at
3 the time of the agency action; and

4 “(B) include credible and reliable data,
5 quantitative analyses, conceptual and numerical
6 models, and model results that—

7 “(i) account for known or potential
8 sources or error;

9 “(ii) are applied using prevailing prin-
10 ciples, methods, tools, and professional
11 standards of practice; and

12 “(iii) are impartially gathered and ob-
13 jectively applied without reliance on pre-
14 cautionary assumptions in favor of a spe-
15 cies or other assumptions or policy pre-
16 scriptions that bias the application.”.

17 (f) ENVIRONMENTAL BASELINE.—Section 7 of the
18 Endangered Species Act of 1973 (16 U.S.C. 1536) is
19 amended by adding at the end the following:

20 “(q) ENVIRONMENTAL BASELINE DEFINED.—In this
21 section, the term ‘environmental baseline’—

22 “(1) means the condition of the species or the
23 critical habitat of the species in the area directly af-
24 fected by the agency action at the time of the pro-
25 posed agency action, without the consequences to the

1 species or the critical habitat of the species caused
2 by the proposed action; and

3 “(2) includes—

4 “(A) the past and present effects of all
5 Federal, State, and private actions and other
6 human activities in the area directly affected by
7 the agency action;

8 “(B) the anticipated effects of each pro-
9 posed Federal project within the area directly
10 affected by the agency action for which a con-
11 sultation under this section has been completed;

12 “(C) the effects of State and private ac-
13 tions that are contemporaneous with the con-
14 sultation in process;

15 “(D) existing structures and facilities and
16 the past, present, and future effects of the
17 physical existence of such structures and facili-
18 ties on the species or the critical habitat of the
19 species; and

20 “(E) the effects of Federal actions being
21 carried out at the time of the proposed agency
22 action and existing Federal facilities that are
23 not within the discretion of the Secretary to
24 modify.”.

1 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—Section 15 of the Endangered
3 Species Act of 1973 (16 U.S.C. 1542) is amended—

4 (1) in subsection (a)—

5 (A) by striking “subsection (b), (c), and
6 (d)” and inserting “subsections (b) and (c)”;

7 (B) in paragraph (1)—

8 (i) by striking “and” after “fiscal year
9 1991,”; and

10 (ii) by inserting “, and \$287,978,000
11 for each of fiscal years 2026 through
12 2031” after “fiscal year 1992”;

13 (C) in paragraph (2)—

14 (i) by striking “and” after “fiscal
15 years 1989 and 1990,”; and

16 (ii) by inserting “, and \$105,400,000
17 for each of fiscal years 2026 through
18 2031” after “fiscal years 1991 and 1992”;

19 and

20 (D) in paragraph (3)—

21 (i) by striking “and” after “fiscal
22 years 1989 and 1990,”; and

23 (ii) by inserting “and \$2,600,000 for
24 each of fiscal years 2026 through 2031”
25 after “fiscal years 1991 and 1992,”;

1 (2) in subsection (b), by inserting “and
2 \$600,000 for each of fiscal years 2026 through
3 2031” after “1992”; and

4 (3) in subsection (c)—

5 (A) by striking “and” after “fiscal years
6 1988, 1989, and 1990,”; and

7 (B) by inserting “and \$9,900,000 for each
8 of fiscal years 2026 through 2031,” after “fis-
9 cal years 1991 and 1992,”.

10 (b) **TECHNICAL AMENDMENT.**—Section 15(b) of the
11 Endangered Species Act of 1973 (16 U.S.C. 1542(b)) is
12 amended by striking “sections 7 (e), (g), and (h)” and
13 inserting “subsections (e), (g), and (h) of section 7”.

14 **SEC. 4. RULE OF CONSTRUCTION.**

15 Nothing in this Act or the amendments made by this
16 Act may be construed to enlarge or diminish the authority,
17 jurisdiction, or responsibility of a State (as that term is
18 defined in section 3 of the Endangered Species Act of
19 1973 (16 U.S.C. 1532)) to manage, control, or regulate
20 fish and wildlife on lands and waters, including Federal
21 lands and waters, within the State.

1 **TITLE I—OPTIMIZING CON-**
2 **SERVATION THROUGH RE-**
3 **SOURCE PRIORITIZATION**

4 **SEC. 101. PRIORITIZATION OF LISTING PETITIONS, RE-**
5 **VIEWS, AND DETERMINATIONS.**

6 (a) IN GENERAL.—Section 4 of the Endangered Spe-
7 cies Act of 1973 (16 U.S.C. 1533) is amended by adding
8 at the end the following:

9 “(j) NATIONAL LISTING WORK PLAN.—

10 “(1) IN GENERAL.—Not later than the date de-
11 scribed in paragraph (2), the Secretary shall submit
12 to Congress a national listing work plan that estab-
13 lishes, for each covered species, a schedule for the
14 completion during the 5-fiscal year period beginning
15 on October 1 of the first fiscal year after the date
16 of the submission of the work plan of—

17 “(A) findings as described in subsection
18 (b)(3)(B);

19 “(B) any proposed or final determination
20 under subsection (a)(1) required by a court
21 order, court decree, or court-approved settle-
22 ment agreement; and

23 “(C) any proposed or final designation of
24 critical habitat under subsection (a)(3) required

1 by a court order, court decree, or court-ap-
2 proved settlement agreement.

3 “(2) SUBMISSION TO CONGRESS.—

4 “(A) IN GENERAL.—The Secretary shall
5 submit to Congress—

6 “(i) together with the budget request
7 of the Secretary for the first fiscal year
8 that begins not less than 365 days after
9 the date of the enactment of this sub-
10 section, the initial work plan required
11 under paragraph (1); and

12 “(ii) together with the budget request
13 of the Secretary for each fiscal year there-
14 after, an updated work plan under para-
15 graph (1).

16 “(B) ADDITIONAL INCLUSIONS.—The Sec-
17 retary shall include with each budget request
18 referred to in subparagraph (A) a description of
19 the amounts to be requested to carry out the
20 work plan for the fiscal year covered by the
21 budget request, including any amounts re-
22 quested to address potential future listings of
23 species considered on an emergency basis in
24 that fiscal year.

25 “(3) PRIORITY.—

1 “(A) IN GENERAL.—In developing a work
2 plan under this subsection, the Secretary shall
3 assign to each species included in the work plan
4 a priority classification of Priority 1 through
5 Priority 5, such that, as determined by the Sec-
6 retary, the following apply:

7 “(i) Priority 1 represents species of
8 the highest priority, to be designated as
9 critically imperiled and in need of imme-
10 diate action.

11 “(ii) Priority 2 represents species with
12 respect to which the best scientific and
13 commercial data available support a clear
14 decision regarding the status of the spe-
15 cies.

16 “(iii) Priority 3 represents species
17 with respect to which studies regarding the
18 status of the species are being carried
19 out—

20 “(I) to answer key questions that
21 may influence the findings of a peti-
22 tion to list the species submitted
23 under subsection (b)(3); and

1 “(II) to resolve any uncertainty
2 regarding the status of the species
3 within a reasonable timeframe.

4 “(iv) Priority 4 represents species for
5 which proactive conservation efforts likely
6 to reduce the effects of the factors de-
7 scribed in subparagraphs (A) through (E)
8 of subsection (a)(1) on the species are
9 being developed or carried out, within a
10 reasonable timeframe and in an organized
11 manner, by Federal agencies, States, land-
12 owners, or other stakeholders.

13 “(v) Priority 5 represents species—
14 “(I) for which there exists little
15 information regarding—

16 “(aa) the effects of the fac-
17 tors described in subparagraphs
18 (A) through (E) of subsection
19 (a)(1) on to the species; or

20 “(bb) the status of the spe-
21 cies; or

22 “(II) that would receive limited
23 conservation benefit in the foreseeable
24 future by listing the species as a

1 threatened species or endangered spe-
2 cies under this section.

3 “(B) USE OF METHODOLOGY.—The Sec-
4 retary shall establish and assign priority classi-
5 fications under subparagraph (A) in accordance
6 with the notice of the Director of the United
7 States Fish and Wildlife Service titled ‘Method-
8 ology for Prioritizing Status Reviews and Ac-
9 companying 12–Month Findings on Petitions
10 for Listing Under the Endangered Species Act’
11 (81 Fed. Reg. 49248; published July 27, 2016),
12 or any successor document.

13 “(C) EXTENSIONS FOR CERTAIN PRIORITY
14 CLASSIFICATIONS.—

15 “(i) PRIORITY 3.—With respect to a
16 species classified as Priority 3 under sub-
17 paragraph (A)(iii), if the Secretary deter-
18 mines that additional time would allow for
19 more complete data collection or the com-
20 pletion of studies relating to the species,
21 the Secretary may retain the species under
22 the work plan for a period of not more
23 than 5 years after the deadline under para-
24 graph (4).

1 “(ii) PRIORITY 4.—With respect to a
2 species classified as Priority 4 under sub-
3 paragraph (A)(iv), if the Secretary deter-
4 mines that existing conservation efforts
5 continue to meet the conservation needs of
6 the species, the Secretary may retain the
7 species under the work plan for a period of
8 not more than 5 years after the deadline
9 under paragraph (4).

10 “(iii) PRIORITY 5.—With respect to a
11 species classified as Priority 5 under sub-
12 paragraph (A)(v), the Secretary may retain
13 the species under the work plan for a pe-
14 riod of not more than 5 years after the
15 deadline under paragraph (4).

16 “(D) REVISION OF PRIORITY CLASSIFICA-
17 TION.—The Secretary may revise, in accordance
18 with subparagraph (A), the assignment to a pri-
19 ority classification of a species included in a
20 work plan at any time.

21 “(E) EFFECT OF PRIORITY CLASSIFICA-
22 TION.—The assignment of a priority classifica-
23 tion to a species included in a work plan is not
24 a final agency action.

1 “(4) DEADLINE.—The Secretary shall act on
2 any petition to add a species to a list published
3 under subsection (c) submitted under subsection
4 (b)(3) not later than the last day of the fiscal year
5 specified for that petition in the most recent work
6 plan.

7 “(5) REGULATIONS.—The Secretary may issue
8 such regulations as the Secretary determines appro-
9 priate to carry out this subsection.

10 “(6) EFFECT OF SUBSECTION.—Nothing in this
11 subsection may be construed to preclude or other-
12 wise affect the emergency listing authority of the
13 Secretary under subsection (b)(7).

14 “(7) DEFINITIONS.—In this subsection:

15 “(A) COVERED SPECIES.—The term ‘cov-
16 ered species’ means a species that is not in-
17 cluded on a list published under subsection
18 (c)—

19 “(i) for which a petition to add the
20 species to such a list has been submitted
21 under subsection (b)(3); or

22 “(ii) that is otherwise under consider-
23 ation by the Secretary for addition to such
24 a list.

1 “(B) WORK PLAN.—The term ‘work plan’
2 means the national listing work plan submitted
3 by the Secretary under paragraph (1).”.

4 (b) CONFORMING AMENDMENT.—Section 4(b)(3)(B)
5 of the Endangered Species Act of 1973 (16 U.S.C.
6 1533(b)(3)(B)) is amended by striking “Within 12
7 months” and inserting “In accordance with the national
8 listing work plan submitted under subsection (j),”.

9 **TITLE II—INCENTIVIZING WILD-**
10 **LIFE CONSERVATION ON PRI-**
11 **VATE LANDS**

12 **SEC. 201. CONSERVATION BENEFIT AGREEMENTS.**

13 (a) LISTING DETERMINATIONS.—Section 4(b)(1) of
14 the Endangered Species Act of 1973 (16 U.S.C.
15 1533(b)(1)) is amended by adding at the end the fol-
16 lowing:

17 “(C) In making a determination under sub-
18 section (a)(1) with respect to a species, the Sec-
19 retary shall take into account and document the ef-
20 fect of any net conservation benefit (as that term is
21 defined in section 10(k)) of any approved Conserva-
22 tion Benefit Agreement (as that term is defined in
23 such section) relating to the species.”.

1 (b) CONSERVATION BENEFIT AGREEMENTS.—Sec-
2 tion 10 of the Endangered Species Act of 1973 (16 U.S.C.
3 1539) is amended by adding at the end the following:

4 “(k) CONSERVATION BENEFIT AGREEMENTS.—

5 “(1) PROPOSED AGREEMENT.—

6 “(A) IN GENERAL.—A covered party may
7 submit a proposed Agreement to the Secretary.

8 “(B) DETERMINATION OF COMPLETE-
9 NESS.—Not later than 30 days after the date
10 on which the Secretary receives a proposed
11 Agreement, the Secretary shall—

12 “(i) determine whether the proposed
13 Agreement is complete; and

14 “(ii) if the Secretary determines the
15 proposed Agreement is incomplete under
16 clause (i), provide the covered party with a
17 written explanation of such determination,
18 including any specific adjustment required
19 for the Secretary to determine the pro-
20 posed Agreement is complete.

21 “(C) APPROVAL; REJECTION.—Not later
22 than 120 days after the date on which the Sec-
23 retary receives a proposed Agreement that the
24 Secretary determines under subparagraph
25 (B)(i) is complete, the Secretary shall—

1 “(i) approve the proposed Agreement
2 if the Secretary determines that the pro-
3 posed Agreement—

4 “(I) is in compliance with, as ap-
5 plicable, section 17.22(c)(1) or
6 17.32(c)(1) of title 50, Code of Fed-
7 eral Regulations (or a successor regu-
8 lation); and

9 “(II) provides assurances to the
10 covered party that, if the covered spe-
11 cies becomes listed after the effective
12 date of such Agreement—

13 “(aa) no additional con-
14 servation measures will be re-
15 quired; and

16 “(bb) additional land, water,
17 or resource use restrictions will
18 not be imposed on the covered
19 party;

20 “(ii) reject the proposed Agreement if
21 the Secretary determines that the proposed
22 Agreement does not meet the requirements
23 described in subclauses (I) and (II) of
24 clause (i); and

1 “(iii) if the Secretary rejects the pro-
2 posed Agreement under clause (ii), provide
3 the submitting covered party a written ex-
4 planation for such rejection, including any
5 specific adjustment required, as of the date
6 on which the Secretary rejects the pro-
7 posed Agreement, for the Secretary to ap-
8 prove the proposed Agreement.

9 “(2) PROGRAMMATIC CONSERVATION BENEFIT
10 AGREEMENTS.—The Secretary may enter into a
11 Conservation Benefit Agreement with a covered
12 party that authorizes such covered party—

13 “(A) to administer such Conservation Ben-
14 efit Agreement;

15 “(B) to hold any permit issued under this
16 section with regard to such Conservation Ben-
17 efit Agreement;

18 “(C) to enroll other covered parties within
19 the area covered by such Conservation Benefit
20 Agreement in such Conservation Benefit Agree-
21 ment; and

22 “(D) to convey any permit authorization
23 held by such covered party under clause (ii) to
24 each covered party enrolled under clause (iii).

1 “(3) TAKE AUTHORIZATION.—If a covered spe-
2 cies is listed as a threatened species or an endan-
3 gered species under section 4, the Secretary, con-
4 sistent with the applicable Agreement, shall issue to
5 the relevant covered party a permit under this sec-
6 tion for the incidental take of and modification to
7 the habitat of such covered species by such covered
8 party.

9 “(4) TECHNICAL ASSISTANCE.—The Secretary
10 shall, upon the request of a covered party, provide
11 the covered party with technical assistance in devel-
12 oping a proposed Agreement.

13 “(5) APPLICABILITY TO FEDERAL LAND.—An
14 Agreement may apply with respect to a covered
15 party that conducts activities on land administered
16 by any Federal agency pursuant to a permit or lease
17 issued to the covered party by that Federal agency.

18 “(6) EXEMPTIONS.—

19 “(A) CONSULTATION.—Section 7(a)(2)
20 does not apply to the approval by the Secretary
21 of a proposed Agreement under this subsection.

22 “(B) DISCLOSURE.—Information sub-
23 mitted by a private party to the Secretary pur-
24 suant to this subsection shall be exempt from

1 disclosure under section 552(b)(3)(B) of title 5,
2 United States Code.

3 “(C) NATIONAL ENVIRONMENTAL POLICY
4 ACT OF 1969.—The approval by the Secretary of
5 a proposed Agreement under this subsection
6 shall not be considered a major Federal action
7 under section 102(2)(C) of the National Envi-
8 ronmental Policy Act of 1969 (42 U.S.C.
9 4332(2)(C)).

10 “(7) DEFINITIONS.—In this subsection:

11 “(A) AFFECTED SPECIES.—The term ‘af-
12 fected species’ means a species—

13 “(i) designated by the Secretary as a
14 candidate species under this Act;

15 “(ii) proposed to be listed pursuant to
16 section 4; or

17 “(iii) that is declining and at risk of
18 being designated by the Secretary as a
19 candidate species under this Act.

20 “(B) AGREEMENT.—The term ‘Agreement’
21 means—

22 “(i) a Conservation Benefit Agree-
23 ment; or

24 “(ii) a programmatic Conservation
25 Benefit Agreement.

1 “(C) CONSERVATION BENEFIT AGREE-
2 MENT.—The term ‘Conservation Benefit Agree-
3 ment’ means the supporting document required
4 for the issuance of a permit under subsection
5 (a)(1)(A) to enhance the propagation or sur-
6 vival of an affected species, as described in the
7 final rule issued by the United States Fish and
8 Wildlife Service titled ‘Endangered and Threat-
9 ened Wildlife and Plants; Enhancement of Sur-
10 vival and Incidental Take Permits’ (89 Fed.
11 Reg. 26070; published April 12, 2024).

12 “(D) COVERED PARTY.—The term ‘covered
13 party’ means a—

14 “(i) party that conducts activities on
15 land administered by a Federal agency
16 pursuant to a permit or lease issued to the
17 party;

18 “(ii) private property owner;

19 “(iii) county;

20 “(iv) State or State agency; or

21 “(v) Tribal government.

22 “(E) COVERED SPECIES.—The term ‘cov-
23 ered species’ means, with respect to an Agree-
24 ment, the affected species that is the subject of
25 such Agreement.

1 “(F) NET CONSERVATION BENEFIT.—The
2 term ‘net conservation benefit’ means the net
3 effect of an Agreement on the covered species,
4 determined by comparing the existing situation
5 of the covered species without the Agreement in
6 effect and a situation in which the Agreement
7 is in effect, including the net effect on—

8 “(i) the effects of the factors de-
9 scribed in subparagraphs (A) through (E)
10 of subsection (a)(1) on the covered species;

11 “(ii) the number of individuals of the
12 covered species; or

13 “(iii) the habitat of the covered spe-
14 cies.

15 “(G) PROGRAMMATIC CONSERVATION BEN-
16 EFIT AGREEMENT.—The term ‘programmatic
17 Conservation Benefit Agreement’ means a Con-
18 servation Benefit Agreement described in para-
19 graph (4).”.

20 **SEC. 202. CONSERVATION PLANS.**

21 (a) IN GENERAL.—Section 10(a)(2) of the Endan-
22 gered Species Act of 1973 (16 U.S.C. 1539(a)(2)) is
23 amended—

24 (1) in subparagraph (B), by inserting “, and
25 shall include the terms and conditions of the related

1 conservation plan, which shall be legally binding on
2 all parties thereto” after “being complied with”; and

3 (2) by adding at the end the following:

4 “(D) Each Federal agency shall, as applicable
5 and to the maximum extent practicable, adopt the
6 mitigation measures contained in a permit issued
7 under subparagraph (B) in any authorization issued
8 by such Federal agency with respect to the action
9 that is covered by such permit.

10 “(E) With respect to an action that is covered
11 by a permit issued under subparagraph (B) and con-
12 sistent with the implementation of the related con-
13 servation plan, the Secretary shall not seek any ad-
14 ditional mitigation measures through any other Fed-
15 eral or State or local process from the permittee.”.

16 (b) EXEMPTION FROM CONSULTATION REQUIRE-
17 MENT.—Section 10(a) of the Endangered Species Act of
18 1973 (16 U.S.C. 1539(a)) is amended by adding at the
19 end the following:

20 “(3) Section 7(a)(2) does not apply to the issuance
21 by the Secretary of a permit under this subsection.”.

1 **SEC. 203. NEPA EXEMPTION FOR INCIDENTAL TAKE PER-**
2 **MITTS.**

3 Section 10(a) of the Endangered Species Act of 1973
4 (16 U.S.C. 1539(a)) is amended by adding at the end the
5 following:

6 “(4) The issuance of a permit under paragraph (2)
7 shall not be considered a major Federal action under sec-
8 tion 102(2)(C) of the National Environmental Policy Act
9 of 1969 (42 U.S.C. 4332(2)(C)).”.

10 **TITLE III—PROVIDING FOR**
11 **GREATER INCENTIVES TO RE-**
12 **COVER LISTED SPECIES**

13 **SEC. 301. PROTECTIVE REGULATIONS UNDER ENDAN-**
14 **GERED SPECIES ACT OF 1973.**

15 Section 4 of the Endangered Species Act of 1973 (16
16 U.S.C. 1533) is amended—

17 (1) in subsection (d), to read as follows:

18 “(d) PROTECTIVE REGULATIONS.—

19 “(1) ISSUANCE.—

20 “(A) IN GENERAL.—Whenever any species
21 is listed as a threatened species pursuant to
22 subsection (c), the Secretary shall issue such
23 regulations as are necessary and advisable to
24 provide for the conservation of that species.

25 “(B) REQUIREMENT.—In issuing a regula-
26 tion under subparagraph (A), the Secretary,

1 consistent with the findings, purposes, and pol-
2 icy described in section 2 and based on the best
3 scientific and commercial data available, shall
4 consider the conservation and economic effects
5 of such regulation.

6 “(2) RECOVERY GOALS.—

7 “(A) IN GENERAL.—If the Secretary issues
8 a regulation under paragraph (1) that prohibits
9 an act described in section 9(a), the Secretary
10 shall, with respect to the species that is the
11 subject of such regulation—

12 “(i) establish objective, incremental
13 recovery goals;

14 “(ii) provide for the stringency of
15 such regulation to decrease as such recov-
16 ery goals are met; and

17 “(iii) provide for State management
18 within such State, if such State is willing
19 to take on such management, beginning on
20 the date on which the Secretary determines
21 that each such recovery goal is met and, if
22 each such recovery goal remains met, con-
23 tinuing until such species is removed from
24 the list of threatened species published
25 pursuant to subsection (c).

1 “(B) STATUS REVIEW.—On the date on
2 which the Secretary determines that each recov-
3 ery goal established under subparagraph (A)(i)
4 for a species is met, the Secretary shall begin
5 a review of the species and subsequently deter-
6 mine, on the basis of such review, whether the
7 species should be removed from the lists pub-
8 lished pursuant to subsection (c)(1).

9 “(3) COOPERATIVE AGREEMENT.—A regulation
10 issued under paragraph (1) that prohibits an act de-
11 scribed in section 9(a) with respect to a resident
12 species shall apply with respect to a State that has
13 entered into a cooperative agreement with the Sec-
14 retary pursuant to section 6(c) only to the extent
15 that such regulation is adopted by such State.

16 “(4) STATE RECOVERY STRATEGY.—

17 “(A) IN GENERAL.—A State may develop
18 a recovery strategy for a threatened species or
19 a candidate species and submit to the Secretary
20 a petition for the Secretary to use such recovery
21 strategy as the basis for any regulation issued
22 under paragraph (1) with respect to such spe-
23 cies within such State.

24 “(B) APPROVAL OR DENIAL OF PETI-
25 TION.—Not later than 120 days after the date

1 on which the Secretary receives a petition sub-
2 mitted under subparagraph (A), the Secretary
3 shall—

4 “(i) approve such petition if the Sec-
5 retary determines the recovery strategy is
6 reasonably certain to be implemented by
7 the petitioning State and to be effective in
8 conserving the species that is the subject
9 of such recovery strategy; or

10 “(ii) deny such petition if the require-
11 ments described in clause (i) are not met.

12 “(C) PUBLICATION.—Not later than 60
13 days after the date on which the Secretary ap-
14 proves or denies a petition under subparagraph
15 (B), the Secretary shall publish such approval
16 or denial on the website of the applicable de-
17 partment.

18 “(D) DENIAL OF PETITION.—

19 “(i) WRITTEN EXPLANATION.—If the
20 Secretary denies a petition under subpara-
21 graph (B), the Secretary shall include in
22 such denial a written explanation for such
23 denial, including a description of the
24 changes to such petition that are necessary
25 for the Secretary to approve such petition.

1 “(ii) RESUBMISSION OF DENIED PETI-
2 TION.—A State may resubmit a petition
3 that is denied under subparagraph (B).

4 “(E) USE IN PROTECTIVE REGULA-
5 TIONS.—If the Secretary approves a petition
6 under subparagraph (B), the Secretary shall—

7 “(i) issue a regulation under para-
8 graph (1) that adopts the recovery strategy
9 as such regulation with respect to the spe-
10 cies that is the subject of such recovery
11 strategy within the petitioning State; and

12 “(ii) establish objective criteria to
13 evaluate the effectiveness of such recovery
14 strategy in conserving such species within
15 such State.

16 “(F) REVISION.—If a recovery strategy
17 that is adopted as a regulation issued under
18 paragraph (1) is determined by the Secretary to
19 be ineffective in conserving the species that is
20 the subject of such recovery strategy in accord-
21 ance with the objective criteria established
22 under subparagraph (E)(ii) for such recovery
23 strategy, the Secretary shall revise such regula-
24 tion and reissue such regulation in accordance
25 with paragraph (1).”; and

1 (2) in subsection (f)(1)(B)—

2 (A) in clause (ii), by striking “and” at the
3 end;

4 (B) in clause (iii), by striking the period at
5 the end and inserting “; and”; and

6 (C) by adding at the end the following:

7 “(iv) with respect to an endangered spe-
8 cies, objective, incremental recovery goals in ac-
9 cordance with subsection (d)(2)(A) for use
10 under that subsection if such endangered spe-
11 cies is changed in status from an endangered
12 species to a threatened species under subsection
13 (c)(2)(B)(ii).”.

14 **SEC. 302. 5-YEAR REVIEW DETERMINATIONS.**

15 Section 4(c) of the Endangered Species Act of 1973
16 (16 U.S.C. 1533(c)) is amended by adding at the end the
17 following:

18 “(3) Not later than 30 days after the date on which
19 the Secretary makes a determination under paragraph
20 (2)(B), the Secretary shall initiate a rulemaking to carry
21 out such determination.”.

22 **SEC. 303. JUDICIAL REVIEW DURING MONITORING PERIOD.**

23 Section 4(g) of the Endangered Species Act of 1973
24 (16 U.S.C. 1533(g)) is amended by adding at the end the
25 following:

1 “(3) The removal of a species from a list published
2 under subsection (c)(1) is not subject to judicial review
3 during the period established under paragraph (1) with
4 respect to the species.”.

5 **SEC. 304. DESIGNATION OF CRITICAL HABITAT.**

6 (a) NOT PRUDENT DETERMINATIONS.—Section
7 4(a)(3)(A) of the Endangered Species Act of 1973 (16
8 U.S.C. 1533(a)(3)(A)) is amended to read as follows:

9 “(A)(i) The Secretary, by regulation pro-
10 mulgated in accordance with subsection (b) and
11 to the maximum extent prudent and deter-
12 minable—

13 “(I) shall, concurrently with making a
14 determination under paragraph (1) that a
15 species is an endangered species or a
16 threatened species, designate any habitat
17 of such species which is then considered to
18 be critical habitat; and

19 “(II) may, from time-to-time there-
20 after as appropriate, revise such designa-
21 tion.

22 “(ii) The Secretary may determine, based
23 on the best scientific data available, that it is
24 not prudent to designate habitat as described in

1 clause (i)(I) for a species, including if the Sec-
2 retary determines—

3 “(I) the species is determined under
4 paragraph (1) to be a threatened species or
5 an endangered species because of take or
6 other human activity and such designation
7 will increase the degree of such take or
8 other human activity;

9 “(II) the species is determined under
10 paragraph (1) to be a threatened species or
11 an endangered species because of a fac-
12 tor—

13 “(aa) other than that described
14 in subparagraph (A) of that para-
15 graph; or

16 “(bb) that cannot be addressed
17 through reasonable and prudent alter-
18 natives resulting from consultations
19 carried out pursuant to section
20 7(a)(2); or

21 “(III) the species primarily occurs in
22 areas not under the jurisdiction of the
23 United States and areas under the juris-
24 diction of the United States where the spe-

1 cies occurs provide no more than a neg-
2 ligible conservation value to the species.

3 “(iii) Notwithstanding clause (i)(I), if the
4 Secretary determines under clause (ii) that it is
5 not prudent to designate habitat as described in
6 clause (i)(I), the Secretary is not required to so
7 designate habitat for the species.”.

8 (b) PRIVATELY OWNED OR CONTROLLED LAND.—
9 Section 4(a)(3) of the Endangered Species Act of 1973
10 (16 U.S.C. 1533(a)(3)) is amended by adding at the end
11 the following:

12 “(C) The Secretary may not designate as critical
13 habitat under subparagraph (A) any privately owned or
14 controlled land or other geographical area that is subject
15 to a land management plan that—

16 “(i) the Secretary determines is similar in na-
17 ture to an integrated natural resources management
18 plan described in section 101 of the Sikes Act (16
19 U.S.C. 670a);

20 “(ii)(I) is prepared in cooperation with the Sec-
21 retary and the head of each applicable State fish
22 and wildlife agency of each State in which such land
23 or other geographical area is located; or

24 “(II) is submitted to the Secretary in a manner
25 that is similar to the manner in which an applicant

1 submits a conservation plan to the Secretary under
2 section 10(a)(2)(A);

3 “(iii) includes an activity or a limitation on an
4 activity that the Secretary determines will likely con-
5 serve the species concerned;

6 “(iv) the Secretary determines will result in—

7 “(I) an increase in the population of the
8 species concerned above the population of such
9 species on the date that such species is listed as
10 a threatened species or an endangered species;
11 or

12 “(II) maintaining the same population of
13 such species on the land or other geographical
14 area as the population that would likely occur
15 if such land or other geographical area is des-
16 ignated as critical habitat; and

17 “(v) to the maximum extent practicable, will
18 minimize and mitigate the impacts of any activity
19 that will likely result in an incidental taking of the
20 species concerned.”.

21 (c) DESIGNATION CONSIDERATIONS.—Section 4(b) of
22 the Endangered Species Act of 1973 (16 U.S.C. 1533(b))
23 is amended—

24 (1) in paragraph (2)—

1 (A) by inserting “the impact on existing
2 efforts of private landowners to conserve the
3 species,” after “impact on national security,”;

4 (B) by striking “The Secretary” and in-
5 serting “(A) The Secretary”; and

6 (C) by adding at the end the following:

7 “(B) In addition to any area otherwise consid-
8 ered by the Secretary for exclusion from critical
9 habitat under subparagraph (A), the Secretary shall
10 consider for exclusion from critical habitat any
11 area—

12 “(i) submitted by a person through public
13 comment pursuant to paragraph (5) or (6); and

14 “(ii) for which such submission includes
15 credible information regarding a meaningful
16 economic impact, impact on national security,
17 impact on existing efforts of private landowners
18 to conserve the applicable species, or other rel-
19 evant impact of specifying the area as critical
20 habitat that supports the exclusion from critical
21 habitat of that area.”;

22 (2) in paragraph (5)(A)(i), by striking “, and”
23 and inserting the following: “, including, with re-
24 spect to a proposed regulation to designate or revise
25 critical habitat under subsection (a)(3)—

1 “(I) a draft economic analysis
2 that identifies any impacts on national
3 security and existing efforts of private
4 landowners to conserve the applicable
5 species and other relevant impacts of
6 the designation or revision that the
7 Secretary determines are within the
8 area proposed for designation or cov-
9 ered by the revision; and

10 “(II) a draft exclusion analysis
11 that identifies each area the Secretary
12 has reason to consider for exclusion
13 under paragraph (2) and why; and”;
14 and

15 (3) in paragraph (6)(A)—

16 (A) in clause (i)(II), by striking “made,”
17 and inserting the following: “made, including,
18 with respect to such a final regulation—

19 “(aa) a final economic anal-
20 ysis that identifies any impacts
21 on national security and existing
22 efforts of private landowners to
23 conserve the applicable species
24 and other relevant impacts of the
25 revision that the Secretary deter-

1 mines are within the area covered
2 by the revision; and

3 “(bb) a final exclusion anal-
4 ysis that identifies each area the
5 Secretary has determined under
6 paragraph (2) to exclude from
7 such revision and why;”; and

8 (B) in clause (ii)(I), by striking “, or” and
9 inserting the following: “, including—

10 “(aa) a final economic anal-
11 ysis that identifies any impacts
12 on national security and existing
13 efforts of private landowners to
14 conserve the applicable species
15 and other relevant impacts of the
16 designation that the Secretary
17 determines are within the area
18 proposed for designation; and

19 “(bb) a final exclusion anal-
20 ysis that identifies each area the
21 Secretary has determined under
22 paragraph (2) to exclude from
23 such designation and why; or”.

1 **SEC. 305. TREATMENT OF STATE, TRIBAL, AND LOCAL GOV-**
2 **ERNMENT DATA.**

3 Section 4(b) of the Endangered Species Act of 1973
4 (16 U.S.C. 1533(b)) is amended—

5 (1) in paragraph (1)(A), by inserting “data
6 submitted to the Secretary by a State, Tribal, or
7 local government, and” after “account”; and

8 (2) in paragraph (2), by inserting “data sub-
9 mitted to the Secretary by a State, Tribal, or local
10 government, as well as” after “consideration”.

11 **SEC. 306. CLARIFYING SIGNIFICANT PORTION OF RANGE**
12 **OF SPECIES.**

13 Section 4(a) of the Endangered Species Act of 1973
14 (16 U.S.C. 1533(a)) is amended by adding at the end the
15 following:

16 “(4) If the Secretary determines under paragraph (1)
17 that a species is a threatened species or an endangered
18 species in only a significant portion of the range of the
19 species, the Secretary may only list the species under sub-
20 section (c) as a threatened species or an endangered spe-
21 cies with respect to that portion of the range of the spe-
22 cies.”.

23 **SEC. 307. DELISTING CRITERIA.**

24 Section 4(c) of the Endangered Species Act of 1973
25 (16 U.S.C. 1533(c)) is amended by adding at the end the
26 following:

1 “(4) The Secretary shall determine under paragraph
2 (2)(B)(i) that a species described in paragraph (2)(A)
3 should be removed from a list described in that paragraph
4 and shall remove such species from such list only if the
5 Secretary determines, pursuant to a review conducted
6 under that paragraph and based on the best scientific and
7 commercial data available, such species—

8 “(A) is extinct;

9 “(B) is not a threatened species or an endan-
10 gered species; or

11 “(C) is not a species.”.

12 **TITLE IV—CREATING GREATER**
13 **TRANSPARENCY AND AC-**
14 **COUNTABILITY IN RECOV-**
15 **ERING LISTED SPECIES**

16 **SEC. 401. REQUIREMENT TO PUBLISH BASIS FOR LISTINGS**
17 **AND CRITICAL HABITAT DESIGNATIONS ON-**
18 **LINE.**

19 Section 4(b) of the Endangered Species Act of 1973
20 (16 U.S.C. 1533(b)) is amended by adding at the end the
21 following:

22 “(9)(A) The Secretary shall make publicly available
23 on the website of the applicable department the best sci-
24 entific and commercial data available that is used as the
25 basis for each regulation, including each proposed regula-

1 tion, promulgated under paragraphs (1) and (3) of sub-
2 section (a).

3 “(B) If a Governor, agency, or legislature of a State
4 determines that public disclosure of any best scientific and
5 commercial data available described in subparagraph (A)
6 is prohibited by a law or regulation of the State, including
7 such a law or regulation requiring the protection of per-
8 sonal information—

9 “(i) the Governor, agency, or legislature of the
10 State may submit to the Secretary a request to ex-
11 empt such best scientific and commercial data avail-
12 able from the application of subparagraph (A); and

13 “(ii) the Secretary shall so exempt such best
14 scientific and commercial data available.

15 “(C) Subparagraph (A) does not apply with respect
16 to global positioning system coordinates or other geo-
17 graphically specific species location information.

18 “(D) Not later than 30 days after the date of the
19 enactment of this paragraph, the Secretary shall execute
20 an agreement with the Secretary of War that prevents the
21 disclosure under this paragraph of classified information
22 pertaining to Department of War personnel, facilities,
23 lands, or waters.”.

1 **SEC. 402. DECISIONAL TRANSPARENCY AND USE OF STATE,**
2 **TRIBAL, AND LOCAL INFORMATION.**

3 Section 6(a) of the Endangered Species Act of 1973
4 (16 U.S.C. 1535(a)) is amended—

5 (1) by inserting “(1)” before the first sentence;

6 and

7 (2) by striking “Such cooperation shall include”

8 and inserting the following:

9 “(2) Such cooperation shall include—

10 “(A) before making a determination under

11 section 4(a), providing to States affected by

12 such determination all data that is the basis of

13 the determination; and

14 “(B)”.

15 **SEC. 403. DISCLOSURE OF EXPENDITURES UNDER ENDAN-**
16 **GERED SPECIES ACT OF 1973.**

17 (a) **REQUIREMENT TO DISCLOSE.**—Section 13 of the
18 Endangered Species Act of 1973 (87 Stat. 902) is amend-
19 ed to read as follows:

20 **“SEC. 13. DISCLOSURE OF EXPENDITURES.**

21 “(a) **REQUIREMENT.**—The Chair of the Council on
22 Environmental Quality, in consultation with the Secretary
23 of the Interior and Secretary of Commerce, shall—

24 “(1) not later than 90 days after the end of

25 each fiscal year, submit to the Committee on Nat-

26 ural Resources of the House of Representatives and

1 the Committee on Environment and Public Works of
2 the Senate an annual report detailing Federal Gov-
3 ernment expenditures for covered suits during the
4 preceding fiscal year; and

5 “(2) make publicly available through the Inter-
6 net a searchable database, updated monthly, of the
7 information described in subsection (b).

8 “(b) INCLUDED INFORMATION.—Each report sub-
9 mitted under subsection (a) shall include—

10 “(1) the case name and number of each covered
11 suit, and, with respect to each covered suit, a
12 hyperlink to each settlement decision, final decision,
13 consent decree, stipulation of dismissal, release, in-
14 terim decision, motion to dismiss, partial motion for
15 summary judgement, or related final document;

16 “(2) a description of each claim or cause of ac-
17 tion in each covered suit;

18 “(3) the name of each covered agency the ac-
19 tions of which give rise to any claim in a covered
20 suit and each plaintiff in such covered suit;

21 “(4) funds expended by each covered agency
22 (disaggregated by agency account) to receive and re-
23 spond to notices referred to in section 11(g)(2) or to
24 prepare for litigation of, litigate, negotiate a settle-
25 ment agreement or consent decree in, or provide ma-

1 terial, technical, or other assistance in relation to, a
2 covered suit;

3 “(5) the number of full-time equivalent employ-
4 ees that participated in the activities described in
5 paragraph (4);

6 “(6) any information required to be published
7 under section 1304 of title 31, United States Code,
8 with respect to a covered suit; and

9 “(7) attorneys fees and other expenses
10 (disaggregated by agency account) awarded in cov-
11 ered suits, including any consent decrees or settle-
12 ment agreements (regardless of whether a decree or
13 settlement agreement is sealed or otherwise subject
14 to nondisclosure provisions), including the basis for
15 such awards.

16 “(c) REQUIREMENT TO PROVIDE INFORMATION.—
17 The head of each covered agency shall provide to the Chair
18 of the Council on Environmental Quality in a timely man-
19 ner all information requested by the Chair to comply with
20 the requirements of this section.

21 “(d) LIMITATION ON DISCLOSURE.—Notwith-
22 standing any other provision of this section, this section
23 shall not affect any restriction in a consent decree or set-
24 tlement agreement on the disclosure of information that
25 is not described in subsection (b).

1 “(e) DEFINITIONS.—In this section:

2 “(1) COVERED AGENCY.—The term ‘covered
3 agency’ means any agency of the—

4 “(A) Department of the Interior;

5 “(B) Forest Service;

6 “(C) Environmental Protection Agency;

7 “(D) National Marine Fisheries Service;

8 “(E) Bonneville Power Administration;

9 “(F) Western Area Power Administration;

10 “(G) Southwestern Power Administration;

11 or

12 “(H) Southeastern Power Administration.

13 “(2) COVERED SUIT.—The term ‘covered suit’
14 means—

15 “(A) any civil action containing any claim
16 arising under this Act against the Federal Gov-
17 ernment and based on the action of a covered
18 agency; and

19 “(B) any administrative proceeding under
20 which the Federal Government awards fees and
21 other expenses to a third party under section
22 504 of title 5, United States Code.”.

23 (b) CLERICAL AMENDMENT.—The table of contents
24 in the first section of the Endangered Species Act of 1973

1 (16 U.S.C. 1531 note) is amended by striking the item
2 relating to section 13 and inserting the following:

“Sec. 13. Disclosure of expenditures.”.

3 **SEC. 404. AWARD OF LITIGATION COSTS TO PREVAILING**
4 **PARTIES IN ACCORDANCE WITH EXISTING**
5 **LAW.**

6 Section 11(g)(4) of the Endangered Species Act of
7 1973 (16 U.S.C. 1540(g)(4)) is amended to read as fol-
8 lows:

9 “(4)(A) The court, in issuing any final order in any
10 suit brought pursuant to paragraph (1), may award costs
11 of litigation (including reasonable attorney and expert wit-
12 ness fees) to an eligible party, whenever the court deter-
13 mines such award is appropriate.

14 “(B) In awarding reasonable attorney and expert wit-
15 ness fees under subparagraph (A) in a suit brought pursu-
16 ant to paragraph (1), the court—

17 “(i) shall base such fees on the prevailing mar-
18 ket rates for the kind and quality of services fur-
19 nished; and

20 “(ii) may not award—

21 “(I) such fees at a rate that exceeds \$125
22 per hour unless the court determines a higher
23 rate is justified because of cost of living or a
24 special factor, such as the limited availability of
25 qualified attorneys for such suit; or

1 “(II) more than \$200,000 total in such
2 fees in a single such suit.

3 “(C)(i) In this paragraph, the term ‘eligible party’—

4 “(I) means a party to a suit brought pur-
5 suant to paragraph (1) that is, as of the date
6 on which the suit was initiated—

7 “(aa) an individual who has a net
8 worth of not more than \$2,000,000;

9 “(bb) an owner of an unincorporated
10 business or a partnership, corporation, as-
11 sociation, unit of local government, or or-
12 ganization, including an organization that
13 is described in section 501(c)(3) of the In-
14 ternal Revenue Code and exempt from tax-
15 ation under section 501(a) of such Code,
16 that has—

17 “(AA) a net worth of not more
18 than \$7,000,000, including both per-
19 sonal and business interests; and

20 “(BB) not more than 500 em-
21 ployees; or

22 “(cc) a cooperative association (as
23 that term is defined in section 15(a) of the
24 Agriculture Marketing Act (12 U.S.C.
25 1141j(a)); and

1 “(II) does not include a party to a suit
2 brought pursuant to paragraph (1) otherwise
3 described in clause (i) of this subparagraph that
4 has sought to recover attorney or expert witness
5 fees under this subsection in 3 or more in-
6 stances in the 12-month period preceding the
7 date on which the final order in such suit is
8 issued, including in such suit.

9 “(ii) Where 2 or more parties to a suit brought pur-
10 suant to paragraph (1) are co-plaintiffs and each such
11 party individually is an eligible party, clause (i)(I) shall
12 be applied to such parties collectively.”.

13 **SEC. 405. ANALYSIS OF IMPACTS AND BENEFITS OF DETER-**
14 **MINATION OF ENDANGERED OR THREAT-**
15 **ENED STATUS.**

16 Section 4(a) of the Endangered Species Act of 1973
17 (16 U.S.C. 1533(a)) is amended by adding at the end the
18 following:

19 “(5)(A) The Secretary shall, concurrently with deter-
20 mining under paragraph (1) whether a species is a threat-
21 ened species or an endangered species, prepare an analysis
22 with respect to such determination of—

23 “(i) the economic effect;

24 “(ii) the effects on national security;

1 “(iii) the effects on human health and safety;
2 and

3 “(iv) any other relevant effect.

4 “(B) Nothing in this paragraph shall delay a deter-
5 mination made by the Secretary under paragraph (1) or
6 change the criteria used by the Secretary to make such
7 a determination.”.

8 **TITLE V—STREAMLINING**
9 **PERMITTING PROCESS**

10 **SEC. 501. LIMITATION ON REASONABLE AND PRUDENT**
11 **MEASURES.**

12 Section 7(b)(4) of the Endangered Species Act of
13 1973 (16 U.S.C. 1536(b)(4)) is amended—

14 (1) in subparagraph (A), by adding “and” at
15 the end;

16 (2) in subparagraph (B), by striking “and” at
17 the end;

18 (3) by striking subparagraph (C);

19 (4) by striking “taking on the species,” and in-
20 serting “taking on the species, including, as nec-
21 essary, through the use of a substitute used to rep-
22 resent a listed species, habitat, or an ecological func-
23 tion to express the amount or extent of such inci-
24 dental taking;”;

1 (5) by striking “minimize such impact,” and in-
2 serting “minimize such impact and that do not pro-
3 pose, recommend, or require the Federal agency or
4 the applicant concerned, if any, to mitigate or offset
5 such impact; and”;

6 (6) by striking “measures specified under
7 clauses (ii) and (iii)” and inserting “measures speci-
8 fied under clause (ii)”;

9 (7) by striking clause (iii); and

10 (8) by redesignating clause (iv) as clause (iii).

11 **SEC. 502. SUCCESSIVE CONSULTATIONS.**

12 Section 7(b) of the Endangered Species Act of 1973
13 (16 U.S.C. 1536(b)) is amended by adding at the end the
14 following:

15 “(5)(A) With respect to an ongoing agency action for
16 which the applicable Federal agency has adopted a reason-
17 able and prudent alternative or a reasonable and prudent
18 measure to comply with subsection (a)(2), in any subse-
19 quent consultation for the agency action that occurs 10
20 years or more after the date on which the initial consulta-
21 tion for the agency action was completed, the Secretary
22 shall determine whether continuing to implement the rea-
23 sonable and prudent alternative or reasonable and prudent
24 measure will materially increase the likelihood of and re-

1 duce the time for recovery of the applicable threatened
2 species or endangered species.

3 “(B) If the Secretary determines under subparagraph
4 (A) that continued implementation of the reasonable and
5 prudent alternative or reasonable and prudent measure
6 will not materially increase the likelihood of and shorten
7 the time for the recovery of the applicable threatened spe-
8 cies or endangered species, the Federal agency shall dis-
9 continue implementation of the reasonable and prudent al-
10 ternative or reasonable and prudent measure notwith-
11 standing subsection (a)(2).”.

12 **SEC. 503. CLARIFYING JEOPARDY.**

13 Section 7(a) of the Endangered Species Act of 1973
14 (16 U.S.C. 1536(a)) is amended by adding at the end the
15 following:

16 “(5)(A) In carrying out a consultation under
17 paragraph (2) or a conference under paragraph (4),
18 the Secretary—

19 “(i) except as provided in clause (ii), may
20 only consider the effects of the action that is
21 the subject of such consultation or conference
22 that the Secretary determines, based on clear
23 and substantial information, using the best sci-
24 entific and commercial data available, and in
25 accordance with subparagraphs (B) and (C), re-

1 spectively, are caused by the action itself and
2 are reasonably certain to occur; and

3 “(ii) shall consider as a beneficial effect of
4 the action that is the subject of such consulta-
5 tion or conference any avoidance, minimization,
6 or mitigation measure proposed by the applica-
7 ble Federal agency or the applicant, if any.

8 “(B) In determining whether an effect of an ac-
9 tion described in subparagraph (A)(i) is caused by
10 the action itself, the Secretary shall consider wheth-
11 er—

12 “(i) the effect is so remote in time from
13 the action under consultation that it is not rea-
14 sonably certain to occur;

15 “(ii) the effect is so geographically remote
16 from the immediate area involved in the action
17 that it is not reasonably certain to occur;

18 “(iii) the effect is only reached through a
19 lengthy causal chain such that the effect not
20 reasonably certain to occur;

21 “(iv) the applicable Federal agency does
22 not have the ability to prevent the effect due to
23 its limited statutory authority; or

24 “(v) would occur regardless of whether the
25 action is carried out.

1 “(C) In determining whether an effect of an ac-
2 tion described in subparagraph (A)(i) is reasonably
3 certain to occur, the Secretary shall consider factors
4 including the following:

5 “(i) Experiences with other such actions
6 that are similar in scope, nature, and mag-
7 nitude to the applicable such action.

8 “(ii) Plans for such action.

9 “(iii) Any economic, administrative, or
10 legal requirement necessary for the action to be
11 carried out that has not been fulfilled.

12 “(iv) Whether the effect has been observed
13 previously and to what extent.

14 “(D) In carrying out a consultation under para-
15 graph (2) or a conference under paragraph (4), the
16 Secretary may not consider an effect of the action
17 that is the subject of such consultation or conference
18 for which there is not clear and substantial informa-
19 tion for the Secretary to base a determination on
20 under subparagraph (A)(i) that the effect of the ac-
21 tion is reasonably certain to occur.

22 “(E) In this paragraph, the terms ‘effect of the
23 action’ and ‘effects of the action’ mean a con-
24 sequence or all consequences, respectively, to listed

1 species or critical habitat that is or are caused by
2 the proposed action.”.

3 **SEC. 504. CLARIFYING ACTION AREA.**

4 Section 7(b)(3)(A) of the Endangered Species Act of
5 1973 (16 U.S.C. 1536(b)(3)(A)) is amended to read as
6 follows:

7 “(A)(i) Promptly after conclusion of consulta-
8 tion under paragraph (2) or (3) of subsection (a),
9 the Secretary shall provide to the Federal agency
10 and the applicant, if any, a written statement setting
11 forth the Secretary’s opinion, and a summary of the
12 information on which the opinion is based, detailing
13 how the agency action affects the species or its crit-
14 ical habitat within the area directly affected by the
15 agency action, which such area may not be specula-
16 tive or remote in time or distance from the agency
17 action. In so doing, the Secretary shall differentiate
18 the effects of the agency action from the environ-
19 mental baseline.

20 “(ii) If jeopardy or adverse modification is
21 found, the Secretary, in cooperation and consultation
22 with the Federal agency and applicant, if any, shall
23 consider a range of reasonable and prudent alter-
24 natives and suggest from among that range those

1 reasonable and prudent alternatives which the Sec-
2 retary believes—

3 “(I) would not violate subsection (a)(2);

4 “(II) can be taken by the Federal agency
5 or applicant, if any, in implementing the agency
6 action;

7 “(III) are economically and technologically
8 feasible for the Federal agency and applicant, if
9 any, to implement; and

10 “(IV) impose the fewest economic and
11 other relevant costs for the applicant, if any.”.

12 **SEC. 505. JUDICIAL REVIEW.**

13 Section 7(n) of the Endangered Species Act of 1973
14 (16 U.S.C. 1536(n)) is amended—

15 (1) by striking “Any person, as defined by sec-
16 tion 3(13) of this Act,” and inserting “(1) Any per-
17 son”; and

18 (2) by adding at the end the following:

19 “(2) Any person may obtain judicial review,
20 under chapter 7 of title 5 of the United States Code,
21 of any opinion issued by the Secretary under sub-
22 section (b) of this section in the United States Court
23 of Appeals for the District of Columbia by filing in
24 such court not later than 150 days after the date on

1 which the opinion is issued a written petition for re-
2 view.”.

3 **TITLE VI— ELIMINATING**
4 **BARRIERS TO CONSERVATION**

5 **SEC. 601. PERMITS FOR CITES-LISTED SPECIES.**

6 Section 9(c)(2) of Endangered Species Act of 1973
7 (16 U.S.C. 1538(c)(2)) is amended to read as follows:

8 “(2) An export from or import into the United
9 States of fish or wildlife listed as a threatened spe-
10 cies or an endangered species pursuant to section 4
11 is lawful under this Act and not subject to permit
12 requirements or other regulations issued by the Sec-
13 retary with respect to exportation and importation
14 pursuant to this Act if—

15 “(A) such fish or wildlife—

16 “(i) is a species that is not native to
17 the United States; and

18 “(ii) is listed in Appendix I or II of
19 the Convention; and

20 “(B) with respect to the export or import,
21 each applicable requirement—

22 “(i) of the Convention is satisfied; and

23 “(ii) of subsections (d), (e), and (f) is
24 satisfied.”.

1 **SEC. 602. UTILIZE CONVENTION STANDARD FOR PERMITS**
2 **APPLICABLE TO NON-NATIVE SPECIES.**

3 Section 10(a)(1) of the Endangered Species Act of
4 1973 (16 U.S.C. 1539(a)(1)) is amended—

5 (1) in subparagraph (A), to read as follows:

6 “(A)(i) with respect to a species that is native
7 to the United States, any act otherwise prohibited by
8 section 9 for scientific purposes or to enhance the
9 propagation or survival of the affected species, in-
10 cluding acts necessary for the establishment and
11 maintenance of experimental populations pursuant
12 to subsection (j); and

13 “(ii) with respect to a species that is not native
14 to the United States, any act otherwise prohibited by
15 section 9 that the Secretary determines is not detri-
16 mental to the survival of the species, including—

17 “(I) the export or import, delivery, receipt,
18 carrying, transporting, or shipping in interstate
19 or foreign commerce; and

20 “(II) buying or selling or offering for sale
21 in interstate or foreign commerce; or”; and

22 (2) by adding at the end the following:

23 “(F) In this subsection, the term ‘is not
24 detrimental to the survival of the species’
25 means—

1 “(i)(I) will not have a negative effect
2 on the status of the species in the wild;

3 “(II) is not a use or removal from the
4 wild that will result in the loss or destruc-
5 tion of critical habitat of the species; and

6 “(III) will not directly interfere with
7 recovery efforts with respect to the species;
8 or

9 “(ii) is an activity—
10 “(I) involving wildlife described
11 in section 17.21(g)(1) of title 50,
12 Code of Federal Regulations; and

13 “(II) that satisfies the conditions
14 for registration under clauses (iii)
15 through (v) of that section.”.

16 **TITLE VII—RESTORING**
17 **CONGRESSIONAL INTENT**

18 **SEC. 701. LIMITING AGENCY REGULATIONS.**

19 Section 11(f) of the Endangered Species Act of 1973
20 (16 U.S.C. 1540(f)) is amended—

21 (1) by striking “The Secretary,” and inserting
22 the following:

23 “(1) IN GENERAL.—The Secretary,”;

1 (2) in paragraph (1), as so designated, by strik-
2 ing “to enforce this Act” and inserting “to enforce
3 this section and section 8A”; and

4 (3) by adding at the end the following:

5 “(2) RULE OF CONSTRUCTION.—This sub-
6 section may not be construed to be an independent
7 source of authority to promulgate regulations to en-
8 force the provisions of this Act other than those in-
9 cluded in this section and section 8A.”.

